

#3794

Sponsor:

Council
Member
Freel

**A REFUNDING PROJECT ORDINANCE APPROVING
AND AUTHORIZING THE FINANCING OF A
REFUNDING PROJECT FOR THE DELAWARE ART
MUSEUM, INC.; MAKING CERTAIN FINDINGS WITH
RESPECT THERETO; AUTHORIZING THE ISSUANCE
OF CITY OF WILMINGTON REVENUE REFUNDING
BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT
TO EXCEED \$24,000,000; AND AUTHORIZING OTHER
NECESSARY ACTION.**

WHEREAS, The Council of The City of Wilmington (the "Council") has heretofore adopted the Wilmington Commercial, Financial Service and Industrial Development Ordinance, Wilmington City Code, Chapter 8, Article II (the "General Ordinance") to encourage and assist the financing of the construction, acquisition, sale or lease of industrial, commercial and other facilities related to the maintenance or promotion of employment or to the redevelopment or revitalization of areas within the City of Wilmington (the "City"); and

WHEREAS, Delaware Art Museum, Inc., a Delaware not-for-profit corporation (the "Borrower"), has applied to the City for assistance in financing a refunding project and related expenses (the "Project") consisting of: (a) the refunding of all or a portion of the City's Revenue Bonds (Delaware Art Museum, Inc. Project) Series 2003 (the "2003 Bonds"); (b) the funding of a debt service reserve fund, if necessary; and (c) the payment of the issuance costs incurred by the Borrower in connection with the proposed financing; and

WHEREAS, the Borrower expects to use equity to terminate a swap entered into by the Borrower in connection with the 2003 Bonds; and

WHEREAS, as required by the General Ordinance, the Borrower has submitted to the City through the Office of Economic Development (the "OED") an application for assistance in financing the Project (the "Application") and has requested the City to finance the same through the issuance by the City of its Revenue Bonds (Delaware

Art Museum, Inc. Project) Series 2013, in an aggregate principal amount not to exceed \$24,000,000 (the "Bonds"); and

WHEREAS, in connection with the 2003 Bonds, the OED found that the financing of the project would accomplish the public purposes contemplated by the General Ordinance by maintaining and providing gainful employment opportunities within the City and also aid, assist and encourage the economic development and redevelopment of the City, and therefore approved the project; and

WHEREAS, the OED has approved the Project; and

WHEREAS, the Mayor of this City has concurred in the approval of the OED and has (i) advised the OED of his concurrence and (ii) forwarded the Application and other materials necessary for introduction of this project ordinance (this "Ordinance") to Council; and

WHEREAS, the Council's finance committee has received (i) the prerequisite preliminary written opinion from the outside auditor regarding the accounting treatment of the Bonds and (ii) the preliminary written opinions of the city solicitor and City's bond counsel regarding certain matters with respect to the Bonds; and

WHEREAS, the Borrower or its representative has made a presentation of the proposed Project at a meeting of Council's finance committee; and

WHEREAS, this Council also desires to approve the Project, to make the above findings and determinations and to authorize the issuance and sale of the Bonds; and

WHEREAS, the City will enter into a (a) Trust Indenture (the "Indenture") with a trustee to be selected by the Borrower (the "Trustee") pursuant to which the City will issue and sell the Bonds; and (b) a Bond Purchase Agreement (the "Bond Purchase Agreement") with an underwriter or other lender selected by the Borrower (the "Bond Purchaser") pursuant to which the Bonds will be sold to the Bond Purchaser; and

WHEREAS, with respect to the Bonds, the City will enter into a Loan Agreement (the " Loan Agreement") with the Borrower and the Trustee pursuant to which (i) the City will lend the proceeds of the Bonds to the Borrower; (ii) the Borrower will execute and deliver to the City a promissory note (the "Note") in the aggregate amount of the Bonds; and (iii) the City will assign to the Trustee the Note and substantially all of its rights under the Loan Agreement to provide a source of payment for and to secure its obligations under the Bonds; and

WHEREAS, the Borrower, to secure the Note, will execute and deliver to the City or the Trustee, as the case may be, as mortgagee, a Mortgage and Security Agreement (the "Mortgage"), granting a mortgage lien on its interest in the Premises (as defined in the Mortgage) and a security interest in certain revenues of the Borrower as set forth in the Mortgage; and

WHEREAS, the Bonds will be special and limited obligations of the City, payable solely from amounts to be paid by the Borrower under the Loan Agreement; and

WHEREAS, the Council desires to authorize the issuance, execution and delivery of the Bonds and the execution and delivery of the other documents required to accomplish the foregoing and to authorize all other necessary action in connection with the Project and the financing thereof.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

Section 1. Definitions. The terms used in this Ordinance shall have the meanings specified herein or in the preambles hereto unless a different meaning is clearly indicated by the context.

Section 2. Authorization. This Ordinance is enacted pursuant to the provisions of the Home Rule Enabling Act as effectuated by vote of the electors in the adoption of the Home Rule Charter of the City and in accordance with the provisions of the General Ordinance.

Section 3. Approval of Project and Findings with Respect Thereto. As required by the General Ordinance, the City hereby approves the findings and determinations made by the OED with respect to the Project with which the Mayor concurs, and in conjunction therewith does hereby make the following findings and determinations:

(a) The issuance and sale by the City of the Bonds in an aggregate principal amount not to exceed \$24,000,000 in order to finance the costs of the Project will promote the public purposes specified in the General Ordinance and will:

(i) tend to maintain and provide gainful employment opportunities within and for the people of the City; and

(ii) aid, assist and encourage the economic development or redevelopment of the City; and

(b) the revenues from which the Bonds will be payable will be sufficient for such purpose; and

(c) the issuance of the Bonds will accomplish the public purposes contemplated by the General Ordinance; and

(d) the amount to be financed does not exceed the estimated Costs of the Project.

Based on the foregoing findings and determinations and as a substantial inducement to the Borrower to locate, remain or expand within the City, the Project is hereby approved and determined to be eligible for financing by the City as provided herein and in the General Ordinance.

Section 4. Authorization of the Bonds. In order to provide funds to pay a portion of the Costs of the Project, the City shall issue its Revenue Bonds (Delaware Art Museum, Inc. Project), Series 2013, in a principal amount not exceeding \$24,000,000, which shall mature and bear interest as shall be determined in a resolution (the "Resolution") to be adopted by the City's Bond Committee (the "Bond Committee").

The Bonds shall be dated the date determined in the Resolution, shall be issued in denominations determined in the Resolution and shall be payable in lawful money of the United States of America.

The Bonds shall be special obligations of the City payable solely and exclusively from payments made by the Borrower under the Loan Agreement and Note and specifically pledged as security therefor by the City pursuant to the Indenture. The Bonds shall be separately secured by the Mortgage and an assignment of the Note and all amounts payable thereunder. The Bonds do not pledge the full faith and credit or taxing power of the City or of The State of Delaware or of any other political subdivision thereof and are not a debt or liability of the City, The State of Delaware or of any other political subdivision thereof.

The Bonds shall not be payable out of any funds, revenues or properties of the City other than those specifically pledged therefor.

Section 5. Authorization of the Indenture and Loan Agreement - Sale of the Bonds. The City shall enter into the Indenture with the Trustee and the Loan Agreement with the Trustee and Borrower setting forth: (i) the terms and conditions under which the Bonds are being issued; (ii) the terms under which the proceeds of the Bonds will be loaned to the Borrower to finance the Project in a manner set forth in the Loan Agreement; (iii) the funds, revenues or property pledged as security for the Bonds; (iv) the provisions for the Borrower to execute and deliver the Note and other documents as provided for in the Indenture and the Loan Agreement all to evidence and secure such loans; (v) the terms and conditions under which the proceeds will be disbursed in order to provide financing with respect to the Project; and (iv) the assignment of all of the City's right, title and interest in and to the Loan Agreement, the Mortgage and the Note and payments thereunder. The Bond Committee may approve a different form of documentation of the transaction.

The Bonds shall be awarded and sold by the Bond Committee to the Bond Purchaser at a private negotiated sale at a purchase price and in accordance with all the

terms and conditions specified in the Bond Purchase Agreement. The Bond Committee is hereby authorized to provide for the execution of the Bond Purchase Agreement by the appropriate City officials.

The Bond Committee is also authorized and directed to approve the form and substance of certain sections relating to the City contained in an Official Statement to be used in connection with the public offering and sale of the Bonds.

Section 6. Execution and Delivery of Documents. The Mayor, the Treasurer and the City Auditor are hereby authorized to execute (by manual or facsimile signature) and deliver, in the name of the City and on its behalf, the Bonds. The Mayor or the Treasurer or the Director of Finance of the City are hereby authorized to execute and deliver, in the name of the City and on its behalf, any documents which are necessary or appropriate in connection with the issuance of the Bonds or the financing of the Project and to approve the final form and substance thereof, and to approve the exact principal amount of the Bonds and the final terms and conditions of the Bonds, such approvals to be conclusively evidenced by the execution thereof, and the City Clerk or Deputy City Clerk is hereby authorized to affix to all of such documents, as well as to the Bonds, the seal of the City (by facsimile or actual impression thereof) and to attest to the same by his or her facsimile or manual signature. Copies of the foregoing documents, together with the other documents relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the City.

Section 7. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the City set forth in this Ordinance and in the documents authorized hereby shall be deemed to be in the covenants, obligations and agreements of the City to the full extent authorized or permitted by law.

Section 8. Further Action. The proper officers of the City are hereby authorized and directed to execute such further documents and do such further things as may

be necessary or proper to carry out the intent and purpose of this Ordinance or any document herein authorized.

Section 9. Descriptive Headings. The descriptive headings of the sections of this Ordinance are inserted for convenience only and shall not control or affect the meaning or construction of any of its provisions.

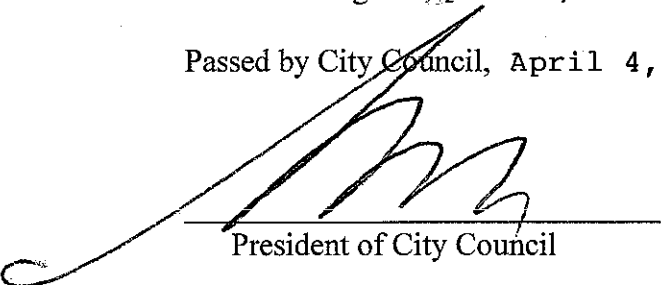
Section 10. Severability. In case any one or more of the provisions contained in this Ordinance or in any Bonds or other document executed and delivered pursuant hereto shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Ordinance or of said Bonds or other documents and this Ordinance, said Bonds or other documents shall be construed and enforced as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 11. Inconsistent Provisions. In the event that any prior ordinances or portions thereof (including the General Ordinance) are inconsistent with this Ordinance, the provisions hereof shall be controlling with respect to the Project and the Bonds. Any inconsistencies between provisions of this Ordinance and the General Ordinance shall not be deemed to be amendments of such General Ordinance.

Section 12. Effective Date. This Ordinance shall become effective upon its passage by Council and approval by the Mayor.

First Reading.....March 7, 2013
Second Reading.....March 7, 2013
Third Reading.....April 4, 2013

Passed by City Council, April 4, 2013



President of City Council

Approved as to form this 7th day
of March, 2013

Michael P. Migliore
City Solicitor

ATTEST: Maribel Seijo
City Clerk

Approved this 8 day of April, 2013

Dennis P. Williams
Mayor

SYNOPSIS: This Ordinance will enable the City to issue tax-exempt revenue bonds for the financing of a refunding project for Delaware Art Museum, Inc. ("the Borrower"). The Bonds will be special revenue obligations of the City, payable exclusively from payments made by the Borrower under the Loan Agreement, the Note and the Mortgage.